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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 255

THE WORLD FIRE & MARINE INSURANCE COMPANY,

Petitioner

versus

EDWARD L. PALMER AND JOHN BRUNO, JR.,

Respondents

BRIEF OF RESPONDENTS

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 265

THE WORLD FIRE & MARINE INSURANCE COMPANY,

Petitioner

versus

BOWDEN L. PALMER AND JOHN BRUNO, JR.,

Respondents

BRIEF OF RESPONDENTS

Introductory

The respondents initially instituted this suit in the state court from whence it was moved by petitioner to the United States District Court at Jackson, Mississippi, to recover on a Policy of Rent Insurance.

The respondents had tenants in the insured building who were currently paying $350.00 per month rent when the house in Jackson was so badly damaged by fire on June 9, 1948 that the City of Jackson, Mississippi, refused both

the owners (respondents) and petitioner a permit to repair the same.

The respondents contended that they were entitled to recover $5,000, or the full face amount of the policy, under the Demolition and Increased Cost of Construction clause specially inserted in the policy at the cost of $75.00. (See clause appearing at Page 47 of petitioner's brief—not included in record.)

The petitioner on the other hand contended that the City of Jackson wrongfully withheld such permit and that the policy should be construed just as if the special demolition clause were not attached thereto, and that under the Rents Clause in the base policy (appearing at P. 46 of petitioner's brief—not included in record) it was liable to the respondents for only three months' rent at $350.00 per month.

The District Court awarded respondents a decree for twelve months' rent at $350.00 per month, or $4,200.00. The petitioner appealed to the United States Court of Appeals for the Fifth Circuit where the decree was affirmed on direct and cross-appeal but the Court of Appeals disagreed with the District Judge on some of his legal conclusions and reasons for his decree.

Admittedly, the respondents lost more than a year's rent on these premises by reason of this fire. The City of Jackson refused to grant a permit to repair this property at the request of the respondents and the petitioner. There are several zoning ordinances in the City of Jackson (two of which are referred to and quoted in the foot-notes to the opinion of the Court of Appeals), which authorized the Building Department of the municipality to withhold this permit. The District Judge found that respondents tried in good faith to get such building permit (R. 389). The adjuster and attorney for petitioner likewise tried in good

faith to get such building permit (R. 389-390). The city officials acted in good faith in refusing such permit (R. 391). The respondents could not make such repairs without a permit without violating a criminal ordinance of the city. (R. 390). This ordinance was sent to the Court of Appeals, (R. 412) but is not in the record here except in the appendix to this brief.

The United States Court of Appeals decided this case compatibly with the laws of the State of Mississippi and consistently with every reported decision from any Circuit having a case in point, including every decision anywise in point cited by petitioner here.

STATEMENT OF FACTS

The undisputed facts in this case are: That petitioner's policy of Rent of Insurance, including the Demolition Clause, was in full force and effect and the increased premium for such additional coverage was fully paid when the frame residence was so badly damaged by fire on June 9, 1948, that their three commercial tenants on the premises were forced to vacate and later cancelled their leases which had more than a year to run at an aggregate rental of $350.-00 per month; that respondents thus suffered a loss of rents as a result of such fire in the aggregate principal amount of $4,200.00; that respondents had $7,500.00 of fire insurance on the house which was paid in full as a total loss during the pendency of this suit, and that the old frame property was razed by respondents in the latter part of 1949 on order of the City of Jackson; that the respondents tried in good faith to get the permit from the City of Jackson without effect, and the petitioner, likewise through their adjuster and their attorney appearing here, both tried without effect to get such permit; that the respondents did not and could not repair said property without a permit without

violating a criminal ordinance of the City of Jackson; that the petitioner was kept advised at all times by respondents of the result of their repeated efforts to get such permit but neither petitioner nor respondents sought to compel the issuance of such permit by judicial action.

The petitioner simply contends that there was no ordinance on the books of the municipality on June 9, 1948, to authorize the municipality to withhold such permit, and that therefore the Demolition Clause in its policy did not come into play.

The respondents on the other hand contend that there were two city ordinances cited in the opinion of the Court of Appeals which authorized the municipality to withhold this permit. The petitioner admits that if the residence were damaged by this fire in excess of fifty percent of its value that the municipality would have been authorized to refuse, as it did, to issue such permit.

The District Judge found that $7,000 would restore the building substantially to its condition before the fire. (R. 387). Here the Court will notice that the District Judge found the *sound* value of the building at the time of the fire to be $16,000 to $17,000 (R. 386); consequently, that it was damaged less than fifty percent of its *sound* value. (R. 391). The head of the Building Department of the City of Jackson, however, thought that $10,000 to $12,000 would be a big price for this building. (R. 174). The Chief Assistant to the Director of the Building Department (Mr. Manning) who refused the permit testified to the same effect. (R. 206-207).

Mr. Swep Taylor, a realtor of admitted qualifications, who is a member of the American Institute of Real Estate Appraisers, (R. 360) said that in his opinion the value of this building was $9,600.00. (R. 366). His appraisal was sent

to the Court of Appeals in original form (R. 404, Item 9), but is not included in the record before this court.

Petitioner's expert witness Wells, a realtor of wide experience in Jackson, thought that the value of the building was $4,761.50. (R. 267). The respondents, as owners of the building, thought it was worth less than $10,000.00 at the time of the fire (R. 100), and they would have sold the building at that time for $7,500.00. (R. 357). The Court of Appeals correctly held under such circumstances that the building was damaged by this fire in excess of fifty percent of its market value, as distinguished from the District Judge's view that approximately forty percent of the *sound* value of the building was damaged by the fire. The District Judge erroneously concluded as a matter of law that the municipality erroneously refused such permit; nevertheless, he awarded respondents one year's rent on the theory that they could not have forced the issuance of a permit within that time, and that they were entitled to be compensated for such loss of rents for that period. The Court of Appeals on the other hand disagreed with the District Judge in his use of *sound* value in arriving at the amount of the loss or damage to this building and properly held that this city ordinance referred to market value and not to *sound* value in accordance with the great weight of authority in this country on that point.

Precisely the Court of Appeals held, as respondents insisted throughout the trial of this case before the District Judge, that the term *value* in this ordinance meant market value and not *sound* value. Accordingly, the testimony of the respondents and the administrative officials of the Building Department of the City of Jackson and the realtor Taylor stand uncontradicted in this record to the effect that this building was damaged in excess of fifty percent of its value by this fire within the purview of the ordinances. It is respondents' contention that it was never their duty to litigate with the City of Jackson over the issuance of

this permit as a condition precedent to the benefit of the policy provisions. There was simply no clear abuse of discretion by the city officials shown in their refusal of this permit. It cannot be said from this record that the officials of the City of Jackson did not act with every degree of circumspection and propriety in refusing this permit in view of their considered opinion that this building was damaged in excess of fifty percent of its value as shown by their testimony, and that it could not be repaired or rebuilt with the same materials, or with conforming materials, at a permissive cost but that the building should be destroyed. (R. 47).

Initially the City officials gave a fallacious reason for refusing such permit but the head of the department concurred in such result but disagreed as to the reason therefor. (R. 184, 205).

Under such circumstances, it is submitted that this record does not present a case which warrants the review on certiorari by this Honorable Court.

ARGUMENT

The opinion of the Court of Appeals for the Fifth Circuit is in full accord with the laws of the State of Mississippi and is not contrary to the holding of any other Circuit on the same question.

At the outset, it is to be noted that there is no reported decision, either in Mississippi or from any other Court of Appeals, which deals with the exact question here except on principles. That fact alone should convince this court that there is absolutely no merit whatsoever in the Petition for Certiorari. The court could not have rendered a sounder or more equitable decision on the facts and cir-

cumstances in this case. It is to be borne in mind that the general agent of the petitioner was respondents' insurance adviser, and that he took great pains to fully acquaint petitioner with the fact that the only reason respondents needed this Demolition Clause in their policy was because the City of Jackson would most probably not permit the property to be repaired for commercial use in the event any appreciable damage was done to the property by fire. (R. 129, 130-1). Under such circumstances, the petitioner realized that its hazard under this particular policy was so great that it charged respondents $75.00 for that clause alone, which was more than the premium on the base policy (R. 61), and which was twice the amount it charged for the same clause in other states where they were written. (R. 281-2).

The policy contains no provision requiring respondents to take action against the municipal authorities to compel the issuance of a permit which the petitioner might consider improvidently or wrongfully withheld.

Both petitioner and respondents sought in good faith to get a permit to repair this building for commercial use as before the fire and such permit was refused. (R. 389). Neither petitioner nor respondents took any action against the City of Jackson to compel the issuance of such permit (R. 391), and as a consequence of such fire and resulting inability of the respondents to accommodate their tenants on such premises, they lost rents thereon for one year after the fire in the principal amount of $4,200.00. The petitioner seeks a review of such decree against it for that amount.

(a) Whether the City of Jackson be technically right or wrong in refusing to issue this permit, the respondents lost $4,200.00 in rents as a result of such fire and by reason of their inability to repair said property without a permit

and such hazard was within the coverage of such policy in suit.

Petitioner cites *Palatine Insurance Company v. Nunn*, 55 So. (Miss.) 44, in support of its petition but such authority clearly shows that such petition is without merit. That case involved a fire loss in Jackson, Mississippi, where the municipality would not permit a building which had been damaged by fire in the amount of $1,400.00 to be repaired. The policy in that case provided:

> "This company shall not be liable beyond the actual value destroyed by fire, for loss occasioned by ordinance or law regulating construction or repair of buildings."

In other words, the contract in that case expressly provided that the company should not be liable for a loss which was occasioned by the enforcement of a zoning ordinance, while in the case at bar the policy expressly provides in its Demolition Clause that the company "shall be liable for loss of rents occasioned by the enforcement of a city ordinance." Yet in the Nunn case, supra, the Supreme Court of Mississippi said:

> "It is thoroughly well settled that in such case, where the loss by fire is partial, but the injury by fire has rendered the building unfit for use for the purpose for which it was constructed, and there are ordinances or there is a law prohibiting its reconstruction, the loss in such cases is a total loss." (55 So. (Miss.) 45).

In that case the Supreme Court of Mississippi further significantly referred to *New Orleans Real Estate Mortgage & Securities Co. v. Teutonia Insurance Co. of New Orleans*, 54 So. (La.) 466, which the Supreme Court of Mississippi said in that opinion that it was constrained to follow and thereby effectually adopted that decision.

The case of *New Orleans Real Estate Mortgage & Securities Co. v. Teutonia Insurance Co. of New Orleans*, supra, involved many of the identical circumstances and contentions made in this case. There a building was partially destroyed by fire and the city engineer ruled that the insured should demolish the building and should not be given a permit to repair it. As in the *Nunn case*, supra, the policy exempted the company from loss occasioned by ordinance or law regulating construction or repair of buildings. The insured building did not come up to the requirements of the building ordinances adopted since its execution. The company conceded that the loss would be total, "if the condemnation of these walls by the city engineer had been justified by the facts, but contend that it was not; and that plaintiff acquiesced in it simply because it chimed in with plaintiff's secret intention not to reconstruct the building but to receive the insurance money and sell the naked lot." (54 So. La. 466).

The court in that case said:

> "We think plaintiff was clearly right in acquiescing in the opinion of the city engineer and of its own architect, and not engaging in a doubtful lawsuit with the city on the subject.****The defendant companies could have had the matter contested if they had so desired.****The action of the city engineer was presumably right.****Defendants had no right to require plaintiff to pull the chestnuts out of the fire for them; to play buffer between them and the city authorities. If they desired to have the matter contested, the door was open to them to have it done.**** In *Monteleone v. Insurance Co.* (La) 18 So. 472, 56 LRA 784, this court said that the exercise of the police power of the city may be erroneous, and is therefore subject to judicial control, *'but courts should not interfere with it, unless on very clear grounds.'* In the present case, after a full hearing of experts, the un-

wisdom of the action of the city engineer is by no means demonstrated."

Accordingly, the court in that case held the companies liable to the plaintiff on these policies in spite of said provision therein eliminating any loss occasioned by ordinance or law regulating construction or repair of buildings, and rejecting the company's suggestion that the action of the city engineer was arbitrary and unlawful. The court in that case expressly recognized the right of courts to supervise a municipal ordinance for its reasonableness but announced the familiar rule that courts will not interfere with municipal action except on very clear grounds which did not exist in that case, and do not exist in the case at bar. *Compare City of Jackson vs. McPherson* 130 So. (Miss.) 287.

The case at bar is not influenced by the valued policy provision of the Mississippi statutes which prohibit a fire insurance company from writing any clause in its policy to pay less than the face amount of the policy for a total loss of the insured property. No property was covered by the policy in suit but the policy merely covered the rents on or from such property. As stated, the insurer having the coverage on the building in the amount of $7,500.00 has fully paid that amount as a total loss to respondents. The petitioner simply undertook for an additional premium of $75.00 to insure respondents against loss of rents for as long as one year on said property by reason of the enforcement of any city ordinance which prevented the repair or rebuilding of the property.

The petitioner does not attack the reasonableness of the city ordinances which prevented the repair of this building, thereby resulting in the loss of the rents therefrom to respondents but they simply contend that the loss of these rents was not occasioned by the enforcement of any ordi-

nance of the City of Jackson. The record literally abounds with complete refutations of that false contention. The respondents concede that if the building were damaged by this fire in excess of fifty percent of its value, that at least two ordinances of the City of Jackson support the municipality in its refusal of such permit. The petitioner argues, as the District Judge found, that the building was damaged only to the extent of approximately forty percent of its *sound* value and that the municipal officers thus had no power or authority to rightfully refuse such permit on that account. The undisputed facts in this case, however, show that the head of the Building Department and his immediate subordinate, who actually refused this permit, thought that this building had a market value not in excess of $10,000 to $12,000. (R. 174). The undisputed proof showed that the actual damage to this building, admeasured in materials of which it was constructed and with which the city would not permit it to be repaired, would amount to approximately $7,000, as the District Judge held. (R. 387). It could not be more clearly demonstrated that these officials were thus fully authorized and empowered by *Section* 65 of the *City Ordinances* (footnote R. 422) and by *Section* 187 of the *City Ordinances* (footnote R. 422) to refuse this permit to the respondents, as they did. Likewise it may not be doubted that *Section* 78 of the City Ordinances, appearing in the Appendix to this brief and which constituted a part of the record in the Court of Appeals (R. 412) made it unlawful for respondents to repair said building without a permit, regardless of the reason which motivated the city officials in withholding it.

Obviously, under either circumstance and for either reason, and whether the city officials were right or wrong in withholding the permit, it cannot be doubted that these respondents paid the petitioner an extortionate premium for this identical protection which both parties previsioned and actually contemplated would be the circumstance in the event of a fire. But the petitioner argues that these city

ordinances refer and relate to *sound* values and not to market values as the District Judge held, but the great and overwhelming weight of authority in this country holds that the term "value" in an ordinance or statute means market value unless the ordinance or statute otherwise provides.

(b) The term "value" in the ordinances of the City of Jackson means market value and not *sound* value.

All the decisions cited by petitioner on the question of *sound* value are cases where buildings were insured and the policy of insurance expressly defined the term "value" as applied to such buildings to mean *sound* value. Consequently, those cases have no application whatsoever here where no tangible property is insured and we are not dealing with a case where a policy provision of that kind can have any application. The question here is as to the meaning of the term "value" in the city ordinance where it is provided that if the property is damaged by fire in excess of fifty percent of its value, that the entire building to be repaired may be required to conform to new building requirements in the area. If this building had been repaired after the fire to conform with new building requirements in the area, it would have cost $20,000. (R. 111).

But what is meant by the term "value" as used in this city ordinance? Under *Section* 1394, *Mississippi Code* 1930, "Rules — How words to be construed — All words and phrases contained in the statutes are used according to their common and ordinary acceptation and meaning; but technical words and phrases according to their technical meaning."

The term "value" in this ordinance would thus be commonly understood by an average man to mean market value, or the translation into dollars of the equivalent in worth or amount which a thing would bring.

66 *C. J.* 419, says:

> "When applied without qualification to property, '*value*' means the price which it will command in the market, its equivalent amount in lawful money. 'Value' usually means 'market value'." Citing copious authorities from many jurisdictions.

In *Boynge v. Helvering, Commissioner,* (2CCA) 117 Fed. (2d), 157, 158, the court said:

> "The value of property, as has been so often said, is the opinion of people as to what it will fetch in exchange."

In 44 *Words & Phrases* (*permanent Ed.*) p. 52, it is said:

> "Property may have 'value,' under Rev. Codes 1921, Sec.-8689, fixing measure of damages for conversion as value of property, though there is no market for it, notwithstanding the fact that value, as used in statute, generally means market value. *Durocher v. Myers,* 224 Pac. 1062."

In 44 *Words & Phrases* at the same page, in *Allen v. Commissioner of Corporations and Taxation,* (*Mass.*) 70 A. L. R. 1299, it is said:

> " 'Value' as used in statute providing for income tax fixing basis for determining gains or losses from sale of capital assets, held 'market value,' not 'acquisition value'."

At *Page* 10 *of the Pocketpart of said* 44 *Words and Phrases,* it is said:

> " 'Value' in connection with legal problems, ordinarily means market value. *Bagdasarian v. Gragnon*, 192 Pac. (2d) 935."

On the same page it is further said:

> "The word 'value' as used in statute requiring town selectmen to appraise taxable property at its full and true value in money means 'sale value.' *Trustees of Phillips Exeter Academy v. Exter*, 33 Atl. (2d) 665, 671."

Webster's New International Dictionary, (2d. Ed.) defines "value" as:

> "That which is considered an equivalent in worth; monetary worth of a thing; marketable price; also worth as estimated in terms of currency or of another medium of exchange; as, What is the value of this watch?"

The construction placed by the Building Department of the City of Jackson on this term "value," is entitled to some weight here. Mr. Martin, as Director of the Building Department, and Mr. Manning, as his immediate subordinate, thought that $10,000 to $12,000 would be a big value for this building. (R. 174). That was the testimony of Mr. Martin and it was agreed that Mr. Manning would testify to the same effect. (R. 206-207). The owners of the property valued the building at $7500.00 (R. 100) and the insurance companies refused to write more than $7500.00 insurance on the building. (R. 101, 104, 146). There was simply no question but that this building was actually damaged by this fire in excess of fifty percent of its actual market value, regardless of any fictional basis whereby figures might be employed to deceive in showing a different *sound* value thereof. Here the respondents have collected

their insurance on the building itself as a total loss and have demolished the building because they could not use it as it was, and they were not allowed to repair it.

As previously indicated, the respondents are entitled to this rent insurance when they can show, as they did, that they lost this $4200.00 by reason of this fire, following which they were not permitted by the city officials under their interpretation of the ordinances to repair the building. Whether the city officials' construction of the ordinances, or whether their estimate of value, be right or wrong was not made a condition of the right of the respondents under this policy to recover their loss as a consequence of this fire. But for the Demolition Clause in this policy, admittedly, these respondents on this record would be entitled to recover under the base policy only three months' rent which the evidence showed would be ample time for the repair of this building to its former condition as before the fire if the City of Jackson would permit such repair thereof but the permit therefor was refused.

Yet the petitioner here seeks, as it has in every trial of this case, to get the court to construe this policy of insurance just as if the petitioner had not inserted the Demolition Clause in its policy at a cost of $75.00 to respondents.

The Supreme Court of Mississippi has never held that the term "value" in an ordinance or statute means *sound* value. The case of *Palatine Insurance Co. v. Nunn*, supra, cited by counsel to support their contention that the term "value" means *sound* value, nowhere even deals with that question but counsel says, of course, that the court meant *sound* value—the court simply did not so say.

The Court of Appeals in its opinion, Page 711 (reported *The World Fire & Marine Insurance Co. v. Palmer, et al,*

182 Fed. (2d) 707) correctly held that, "The term 'value' whenever used in statutes or contracts is generally held to mean market value."

Thus, the Court of Appeals properly concluded that the building in question was damaged by this fire in excess of fifty percent of its value, according to the undisputed proof of such market value thereof. (R. 365-6).

The Court of Appeals did not in any wise impinge upon Rule 52A in reaching such conclusion. There was doubtless sufficient evidence in the record to justify the trial judge in finding as a fact that the *sound* value of this building was $16,000 to $17,000. (R. 386). He made no finding as to the market value of said building; consequently, the trial judge's finding of fact as a matter of law was immaterial. Such factual conclusion of the trial judge on that point was certainly not binding upon the United States Court of Appeals.

The decision of the United States Court of Appeals construed the Demolition Clause to mean:

> "Such a provision does not contemplate that the actual and conclusive effectiveness of the law or ordinance to prevent repairs or replacements, as determined only by a Court of last resort, and as the result of protracted litigation, shall be the test by which liability is ascertained. It does not impose upon the insureds an obligation to compel the issuance of a building repair permit." (*The World Fire & Marine Insurance Co. v. Palmer*, et al., 182 F. (2d) 707, 711).

The Court of Appeals in this case at Page 710 of the opinion said that in the case of this kind it was the duty of the insured to make proper application for a permit and further said:

> "If such effort be made, a determination by the building authorities of the city, made in good faith, in the exercise of an informed judgment, under all of the facts known to such authorities, (especially where a question of value is the primary one), which finds a reasonable basis for support in the terms and provisions of a city ordinance, concludes the question of insurance coverage. A loss of rentals resulting from such a determination is, within the terms of the endorsement, 'occasioned by the enforcement of any state or municipal law or ordinance regulating the construction and repair of buildings and in force at the time such loss occurs'."

Fully analyzed and understood, the position of the petitioner resolves itself into a mere disputation with the city authorities over the factual conclusion which they reached as to the value of this property at a time when there were three city ordinances which deprived respondents of this permit. The petitioner occupies an anomalous position in this suit since it repeatedly stated to the trial judge, and he incorporated such statement in his finding (R. 390) that if this building were damaged by this fire in excess of fifty percent of its value, that the petitioner would have no defense to this suit. Yet that is exactly what this record shows—that this property was damaged by this fire in excess of fifty percent of its value and the United States Court of Appeals so held. The petitioner, however, continues to argue that the property was not damaged to such extent, and that the action of the City of Jackson was arbitrary and that consequently, the loss of respondents was not occasioned within the coverage of its policy. The decision of the United States Court of Appeals in this case is abundantly supported by *Palatine Insurance Company v. Nunn*, 55 So. (Miss.) 44, following *New Orleans Real Estate, etc. Co. v. Teutonia Insurance Co.*, 54 So. (La.) 466. That decision is in full accord with *City of New York Fire Ins. Co. v. Chap-*

man, (7 CCA) 76 Fed. (2d) 76; *Princess Garment Co. v. Fireman's Fund Ins. Co.,* (6CCA) 115 Fed. (2d) 380; *Rutherford v. Royal Ins. Co.* (4 CCA), 12 Fed. (2d) 880, 49 ALR 814; and *Liverpool & London & Globe Ins. Co. v. Nebraska S. Warehouses,* (8CCA) 96 Fed. (2d) 30, 35, where the court said:

> "The applicable rule of law approved by this court in *St. Paul Fire & Marine Ins. Co. v. Eldracher,* 8 Cir. 33 Fed. 2d. 675, 682, is concisely stated in 26 *C. J.* 351, as follows: 'If by reason of public regulations as to the rebuilding of buildings destroyed by fire, such rebuilding is prohibited, the loss is total, although some portion of the building remains which might otherwise have been available in rebuilding. So, also, if the insured building is so injured by the fire as to be unsafe and is condemned by the municipal authorities, the loss is total.'
>
> "The rule so stated appears to be supported by the great weight of authority. *Dinneen v. American Ins. Co.,* 98 Neb. 97, 152 NW 307, LRA 1915E, 618; Ann. Cas. 1917B 1246; *Rutherford v. Royal Ins. Co.,* 4 Cir. 12 F. 2d. 880, 49 ALR 814; *Larkin v. Glen Falls Ins. Co.,* 80 Minn. 527, 83 NW 409, 81 Am. St. Rep. 286; *Lux v. Insurance Co.,* 221 Mo. App. 999, 295 SW 847.
>
> "The issue before the court upon the trial was whether the loss was partial or total. To render the order of condemnation admissible it was necessary to show, by competent evidence, that the building was condemned because it was 'so injured by the fire as to be unsafe.' That is, there must appear to have been a casual relation between the injured condition of the building resulting from the fire and the condemnation. Otherwise the condemnation was not relevant."

Cf. *Franklin Ins. Co. v. Brewer*, 159 So. (Miss.) 545.

It is without dispute in this record that the parties intended that this policy as written should cover this loss which was actually previsioned by the parties when the policy was taken. (R. 148-149). The petitioner's agent who wrote the policy in suit persuaded respondents to accept the contract and pay the very high premium thereon because they would lose rent on this property in the event of a fire because the city would not permit it to be rebuilt. (R. 29-30). In the letter of transmittal of the contract of insurance, the agent wrote: "Due to the city ordinance, the building cannot be replaced, and in order to cover the loss due to the inability to rebuild due to the city ordinarce, the additional premium of $65.65 was charged." (R. 61). Because of the known hazard the petitioner charged a double premium for this Demolition Clause. (R. 281-282). The petitioner seeks a construction of the contract most favorable to it in this case but the rule is that such contract must be construed most strongly against the insurer and not the insured.

In 44 *C. J. S., Section* 297, pp. 1165-1166., it is provided:

> "An insurance contract or policy should be liberally construed to accomplish the purpose or object for which it is made.
>
> "A contract or policy of insurance should be given a liberal construction so as to uphold it and accomplish the purpose or object for which it is made, rather than a strict, technical construction which may defeat such purpose or object."

To the same effect is *Locomotive Engineers Mutual Life & Accident Insurance Co. v. Meeks*, 127 So. 699, where

the court refused to "Place a literal construction, but rather one of a practical value upon the terms of the policy," thereby construing the coverage to apply regardless of the actual language of the policy to comport with the intention and purpose of the parties in effecting the insurance.

The court will notice from the opinion of the United States Court of Appeals that it pretermitted a discussion of the existence of Section 78 of the City Ordinances making it a misdemeanor to do such work without a permit, since the court very properly concluded that the municipality acted neither arbitrarily nor unreasonably in withholding the permit. (Opinion of Court 182 Fed. (2d) 712). Yet aside from the fact that the city withheld this permit from the respondents, whether right or wrong, still the City of Jackson had such ordinance, appearing as Section 78 and copied into the Appendix of this brief, which made it a misdemeanor to make such repairs without a permit. It follows, as the night the day, that the respondents lost $4200.00 in rents for the year following the fire because they could not repair said building without violating the law. That in and of itself would appear to clearly bring respondents' case within the purview of petitioner's policy.

CONCLUSION

In conclusion, neither the record nor this petition in any wise presents any special or important reasons for a certiorari in this case. On the other hand, petitioner has not cited one authority to bear out its contention that any important question of local law has been decided by the United States Court of Appeals in probable conflict with local decisions or with any decision of any other Circuit on the point; but, on the contrary, the decisions cited by petitioner actually demonstrate the fallacy of its contention and

position here and clearly demonstrate that its petition should be denied.

It is submitted that under Rule 30 of this Court, Paragraphs 2 and 3 thereof, that respondents are entitled to a judgment here against petitioner and its sureties for the amount of this judgment with six percent interest thereon and ten percent damages under said rule. This is a case in equity and it cannot be gainsaid by the court that the petitioner's action here is for mere purposes of delay; and being a case in equity, unless the court otherwise expressly decrees, the respondents are entitled to these damages as a matter of vested right under this rule. The petitioner has not brought the complete record before this court—has brought none of the original exhibits shown at Record 404 and none of the ordinances introduced by agreement at Record 412—thereby clearly demonstrating the lack of merit in its petition.

Most Respectfully Submitted,

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Attorney for Respondents,
Jackson, Mississippi.

APPENDIX

Section 67, *Revised Ordinances of the City of Jackson* 1938:

No person shall erect or construct or proceed with the erection or construction of any building or structure, nor add to, enlarge, move, improve, alter, repair, convert, extend or demolish any building or structure, or cause the same to be done, without first obtaining a building permit therefor from the Building Inspector.

Section 74, *Revised Ordinances of the City of Jackson* 1938:

Any building or portion thereof, including buildings and or structures in process of erection, if found to be dangerous to persons or property, or unsafe for the purpose for which it is being used, or in danger from fire due to defects in construction, or dangerous for use because of insufficient means of egress in case of fire, or which violates the provisions of this Code due to the removal, decay, deterioration or the falling off of any thing, appliance, device or requirement originally required by this Code, or which has become damaged by the elements of fire to an extent of 50 per cent of its value, may be condemned by the Building Inspector. The Building Inspector may order portions of the structural frame of a building or structure to be exposed for inspection when in his opinion they are in an unsafe condition. In any of the aforesaid cases the Building Inspector shall serve notice in writing on the owner, reputed owner or person in charge of such a building or premises, setting forth what must be done to make such building safe. The person receiving such notice shall commence within forty eight hours (48) thereafter to make the changes, repairs or alterations set out in such notice and diligently proceed with such work or demolish the building. No such building shall be occupied or used for any purpose after the Building Inspector serves written notice of its unsafe or dangerous condition until the instructions of the Building Inspector have been complied with.

Section 78, *Revised Ordinances of the City of Jackson* 1938:

It shall be unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, remove, demolish, convert, equip, use or occupy or maintain any building and/or structure or any portion of any building and/or structure in the city, contrary to or in violation of

any provision of this code or to cause, permit or suffer the same to be done.

Any person, firm, or corporation violating any of the provisions of this Code shall be deemed guilty of a misdemeanor and each such person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this Code is committed, continued or permitted, and upon the conviction of any such violation such person shall be punishable by fine of not more than One Hundred Dollars ($100.-00), or by imprisonment in the city jail for not more than thirty days (30), or both such fine and imprisonment.